

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GWENDOLYN LOUISE GORDEN,  
Plaintiff,  
v.  
CAROLYN W. COLVIN,  
Acting Commissioner of Social Security,  
Defendant.

Case No. CV 13-01482-JEM

MEMORANDUM OPINION AND  
ORDER REVERSING DECISION OF  
THE COMMISSIONER OF SOCIAL  
SECURITY

**PROCEEDINGS**

On August 28, 2013, Gwendolyn Louise Gorden (“Plaintiff” or “Claimant”) filed a complaint seeking review of the decision by the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s application for Supplemental Security Income benefits. The Commissioner filed an Answer on December 24, 2013. On February 14, 2014, the parties filed a Joint Stipulation (“JS”). The matter is now ready for decision.

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record (“AR”), the Court concludes that the Commissioner’s decision must be reversed and remanded for further proceedings in accordance with this Memorandum Opinion and Order and with law.

## BACKGROUND

Plaintiff is a 49-year-old female who applied for Supplemental Security Income benefits on July 24, 2009, alleging disability beginning November 1, 2006. (AR 9.) The ALJ determined that Plaintiff has not engaged in substantial gainful activity since July 24, 2009, the application date. (AR 11.)

Plaintiff's claim was denied initially on November 17, 2009 and on reconsideration on June 10, 2010. (AR 9.) Plaintiff filed a timely request for hearing, which was held before Administrative Law Judge ("ALJ") Danny Pittman on November 8, 2011, in San Bernardino, California. (AR 9.) Claimant appeared and testified at the hearing and was represented by counsel. (AR 9.) Vocational expert ("VE") Troy L. Scott also appeared and testified at the hearing. (AR 9.)

The ALJ issued an unfavorable decision on January 19, 2012. (AR 9-15.) The Appeals Council denied review on June 25, 2013. (AR 1-3.)

## DISPUTED ISSUES

As reflected in the Joint Stipulation, Plaintiff raises the following disputed issues as grounds for reversal and remand:

1. Whether the ALJ properly considered Plaintiff's testimony and made proper credibility findings.
2. Whether the ALJ properly considered Plaintiff's treating physician's opinion and properly developed the record.

## STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and based on the proper legal standards).

Substantial evidence means "'more than a mere scintilla,' but less than a preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting

1 Richardson v. Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is “such  
2 relevant evidence as a reasonable mind might accept as adequate to support a  
3 conclusion.” Richardson, 402 U.S. at 401 (internal quotation marks and citation  
4 omitted).

5 This Court must review the record as a whole and consider adverse as well as  
6 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).  
7 Where evidence is susceptible to more than one rational interpretation, the ALJ’s  
8 decision must be upheld. Morgan v. Comm’r of the Soc. Sec. Admin., 169 F.3d 595, 599  
9 (9th Cir. 1999). “However, a reviewing court must consider the entire record as a whole  
10 and may not affirm simply by isolating a ‘specific quantum of supporting evidence.’”  
11 Robbins, 466 F.3d at 882 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir.  
12 1989)); see also Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007).

### 13 THE SEQUENTIAL EVALUATION

14 The Social Security Act defines disability as the “inability to engage in any  
15 substantial gainful activity by reason of any medically determinable physical or mental  
16 impairment which can be expected to result in death or . . . can be expected to last for a  
17 continuous period of not less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A),  
18 1382c(a)(3)(A). The Commissioner has established a five-step sequential process to  
19 determine whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920.

20 The first step is to determine whether the claimant is presently engaging in  
21 substantial gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the  
22 claimant is engaging in substantial gainful activity, disability benefits will be denied.  
23 Bowen v. Yuckert, 482 U.S. 137, 140 (1987). Second, the ALJ must determine whether  
24 the claimant has a severe impairment or combination of impairments. Parra, 481 F.3d at  
25 746. An impairment is not severe if it does not significantly limit the claimant’s ability to  
26 work. Smolen, 80 F.3d at 1290. Third, the ALJ must determine whether the impairment  
27 is listed, or equivalent to an impairment listed, in 20 C.F.R. Pt. 404, Subpt. P, Appendix I  
28 of the regulations. Parra, 481 F.3d at 746. If the impairment meets or equals one of the

1 listed impairments, the claimant is presumptively disabled. Bowen v. Yuckert, 482 U.S.  
2 at 141. Fourth, the ALJ must determine whether the impairment prevents the claimant  
3 from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir. 2001).

4 Before making the step four determination, the ALJ first must determine the  
5 claimant's residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). The RFC is  
6 "the most [one] can still do despite [his or her] limitations" and represents an assessment  
7 "based on all the relevant evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The  
8 RFC must consider all of the claimant's impairments, including those that are not severe.  
9 20 C.F.R. §§ 416.920(e), 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

10 If the claimant cannot perform his or her past relevant work or has no past  
11 relevant work, the ALJ proceeds to the fifth step and must determine whether the  
12 impairment prevents the claimant from performing any other substantial gainful activity.  
13 Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000). The claimant bears the burden of  
14 proving steps one through four, consistent with the general rule that at all times the  
15 burden is on the claimant to establish his or her entitlement to benefits. Parra, 481 F.3d  
16 at 746. Once this prima facie case is established by the claimant, the burden shifts to  
17 the Commissioner to show that the claimant may perform other gainful activity.  
18 Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support a finding that a  
19 claimant is not disabled at step five, the Commissioner must provide evidence  
20 demonstrating that other work exists in significant numbers in the national economy that  
21 the claimant can do, given his or her RFC, age, education, and work experience. 20  
22 C.F.R. § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is  
23 disabled and entitled to benefits. Id.

#### 24 THE ALJ DECISION

25 In this case, the ALJ determined at step one of the sequential process that Plaintiff  
26 has not engaged in substantial gainful activity since July 24, 2009, the application date.  
27 (AR 11.)  
28

1 At step two, the ALJ determined that Plaintiff has the following medically  
2 determinable severe impairments: headaches; pseudo seizures; hypertension. (AR 11-  
3 12.) The ALJ also acknowledged the medically determinable mental impairment of  
4 memory loss and forgetfulness which the ALJ found was nonsevere.

5 At step three, the ALJ determined that Plaintiff does not have an impairment or  
6 combination of impairments that meets or medically equals the severity of one of the  
7 listed impairments. (AR 12.)

8 The ALJ then found that Plaintiff has the RFC to perform a full range of work at all  
9 exertional levels but with the following non-exertional limitations:

10 . . . able to frequently balance, stoop, kneel, crouch, crawl and climb  
11 ramps or stairs. Precluded from climbing ladders, ropes or scaffolds  
12 and should avoid concentrated exposure to hazards (seizure  
13 precautions).

14 (AR 12-14.) In determining this RFC, the ALJ made an adverse credibility determination.  
15 (AR 13.)

16 At step four, the ALJ found that Plaintiff is able to perform past relevant work as a  
17 clerk typist. (AR 14.) The ALJ also found that considering Claimant's age, education  
18 and RFC, there are jobs that exist in significant numbers in the national economy that  
19 Claimant can perform, including industrial cleaner, hand packager, and dry cleaning  
20 worker. (AR 14-15.)

21 Consequently, the ALJ found that Claimant was not disabled, within the meaning  
22 of the Social Security Act. (AR 15.)

### 23 **DISCUSSION**

24 The ALJ decision must be reversed. The ALJ did not properly consider the  
25 medical evidence. The ALJ failed to mention or address Plaintiff's treating source  
26 opinions which if credited are work-preclusive. The ALJ also failed to fully develop the  
27 record.  
28

## 1 I. THE ALJ FAILED TO CONSIDER THE MEDICAL EVIDENCE

2 Plaintiff contends that the ALJ erred by failing to consider the treating source  
3 opinions of Dr. Lori Uber-Zac and Dr. Christine Bierdrager. The Court agrees.

### 4 A. Relevant Federal Law

5 In evaluating medical opinions, the case law and regulations distinguish among  
6 the opinions of three types of physicians: (1) those who treat the claimant (treating  
7 physicians); (2) those who examine but do not treat the claimant (examining physicians);  
8 and (3) those who neither examine nor treat the claimant (non-examining, or consulting,  
9 physicians). See 20 C.F.R. §§ 404.1527, 416.927; see also Lester v. Chater, 81 F.3d  
10 821, 830 (9th Cir. 1995). In general, an ALJ must accord special weight to a treating  
11 physician's opinion because a treating physician "is employed to cure and has a greater  
12 opportunity to know and observe the patient as an individual." Magallanes v. Bowen,  
13 881 F.2d 747, 751 (9th Cir. 1989) (citation omitted). If a treating source's opinion on the  
14 issues of the nature and severity of a claimant's impairments is well-supported by  
15 medically acceptable clinical and laboratory diagnostic techniques, and is not  
16 inconsistent with other substantial evidence in the case record, the ALJ must give it  
17 "controlling weight." 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

18 Where a treating doctor's opinion is not contradicted by another doctor, it may be  
19 rejected only for "clear and convincing" reasons. Lester, 81 F.3d at 830. However, if the  
20 treating physician's opinion is contradicted by another doctor, such as an examining  
21 physician, the ALJ may reject the treating physician's opinion by providing specific,  
22 legitimate reasons, supported by substantial evidence in the record. Lester, 81 F.3d at  
23 830-31; see also Orn, 495 F.3d at 632; Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir.  
24 2002). Where a treating physician's opinion is contradicted by an examining  
25 professional's opinion, the Commissioner may resolve the conflict by relying on the  
26 examining physician's opinion if the examining physician's opinion is supported by  
27 different, independent clinical findings. See Andrews v. Shalala, 53 F.3d 1035, 1041  
28 (9th Cir. 1995); Orn, 495 F.3d at 632. Similarly, to reject an uncontradicted opinion of an

1 examining physician, an ALJ must provide clear and convincing reasons. Bayliss v.  
2 Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005). If an examining physician's opinion is  
3 contradicted by another physician's opinion, an ALJ must provide specific and legitimate  
4 reasons to reject it. Id. However, "[t]he opinion of a non-examining physician cannot by  
5 itself constitute substantial evidence that justifies the rejection of the opinion of either an  
6 examining physician or a treating physician"; such an opinion may serve as substantial  
7 evidence only when it is consistent with and supported by other independent evidence in  
8 the record. Lester, 81 F.3d at 830-31; Morgan, 169 F.3d at 600.

## 9 **B. Analysis**

10 Plaintiff Gwendolyn Gorden who has hypertension suffered two seizures or  
11 blackouts in 2006, one in 2007 and another in 2010. (AR 13.) Her primary care  
12 physician thought the seizures could be due to her hypertension medication. (AR 13,  
13 12.) She was started on Topamax but still has experienced numbness, tingling and  
14 auras. (AR 13.) Nonetheless, her EKGs and brain scans have been normal. (AR 13,  
15 14.) The ALJ found that Claimant has the medically determinable severe impairments of  
16 headaches, pseudo seizures and hypertension. (AR 11.) The ALJ also found no  
17 exertional limitations but precluded certain activities as seizure precautions. (AR 12.)  
18 The ALJ's RFC imposes no mental limitations.

### 19 1. Dr. Bierdrager

20 Plaintiff testified she has confusion and memory problems. (AR 12.) The ALJ  
21 acknowledged Claimant has the medically determinable mental impairments of memory  
22 loss and forgetfulness but found those impairments result in no significant functional  
23 limitations and concluded that they were nonsevere. (AR 11.) The ALJ, however, does  
24 not cite to any specific evidence supporting his wholly conclusory nonseverity  
25 determination.

26 There is contrary evidence. On August 25, 2011, Dr. Christine Bierdrager, Ph.D.,  
27 L.P., for Rachel Viers, M.A., completed a Medical Opinion Re: Ability To Work-Related  
28 Activities (Mental). (AR 414-415.) Dr. Bierdrager assessed Plaintiff as having "no



1 useful ability to function” in maintaining regular attendance, completing a normal work  
2 week without interruptions from psychologically based symptoms and performing at a  
3 competitive pace. (AR 414.) Dr. Bierdrager also assessed Claimant as being “unable to  
4 meet competitive standards” in remembering work-like procedures, sustaining an orderly  
5 routine without supervision, accepting instructions, responding to changes in the work  
6 setting and dealing with normal work stress. (AR 414-415.) She also found Plaintiff  
7 seriously limited in understanding, remembering and carrying out short, simple  
8 instructions. (AR 414.) Dr. Bierdrager specifically noted Plaintiff has a “very poor  
9 memory” and “trouble concentrating.” (AR 415.) Dr. Bierdrager opined Plaintiff would  
10 miss work more than four days a month. (AR 415.) Dr. Bierdrager’s assessment was  
11 based on “case notes/supervision.” (AR 415.)

12 The ALJ did not discuss or even mention Dr. Bierdrager’s assessment. This was  
13 error and the error was not harmless because if credited Dr. Bierdrager’s assessment  
14 would be work-preclusive. See Stout v. Comm’r, Soc. Sec. Adm., 454 F.3d 1050, 1055  
15 (9th Cir. 2006) (error to be harmless must be “inconsequential to the ultimate  
16 nondisability determination”). The Commissioner contends that Dr. Bierdrager did not  
17 provide any objective basis for her opinions but this Court is limited to reviewing the  
18 reasons contained in the ALJ decision. Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir.  
19 2003) (“We are constrained to review the reasons the ALJ asserts”). The Commissioner  
20 questions whether Dr. Bierdrager was a treating physician and notes she is not  
21 mentioned anywhere else in the record but this sort of ambiguity in the record generally  
22 triggers the ALJ’s duty to inquire and to develop the record more fully. Tonapetyan v.  
23 Halter, 242 F.3d 1144, 1150 (9th Cir. 2001); Smolen, 80 F.3d at 1288; Brown v. Heckler,  
24 713 F.2d 441, 443 (9th Cir. 1983).

25 The Commissioner next contends that the ALJ was entitled to rely on the opinion  
26 of State reviewing physician Dr. Gregg who found no medically determinable mental  
27 impairments based on his review of the medical records through the date of his report,  
28 October 29, 2009. (AR 377.) Because Dr. Gregg relied on independent clinical



1 evidence in the record, the Commissioner observes that Dr. Gregg's non-treating, non-  
2 examining opinion constitutes substantial evidence. Bray v. Astrue, 554 F.3d 1219,  
3 1221-22, 1227-28 (9th Cir. 2009); Thomas, 278 F.3d at 958-59; Andrews, 53 F.3d at  
4 1041-42. The Commissioner's arguments, however, are insufficient under the law to  
5 disregard the opinion of Dr. Bierdrager. The Commissioner's cases do not stand for the  
6 proposition that the ALJ can ignore the opinion of a treating physician. Indeed, as  
7 Thomas teaches, the ALJ must set forth specific legitimate reasons for rejecting her  
8 opinion, after "setting out a detailed and thorough summary of the facts and conflicting  
9 clinical evidence." 278 F.3d at 957. Social Security regulations indicate that every  
10 medical opinion will be evaluated, 20 C.F.R. § 404.1527(d)(2). SSR 96-2p states that  
11 "the notice of determination or decision must contain specific reasons for the weight  
12 given to the treating source's medical opinion, supported by the evidence in the case  
13 record, and must be sufficiently specific to make clear to any subsequent reviewers the  
14 weight the adjudicator gave to the treating source's opinion and the reasons for that  
15 weight."

16 Dr. Gregg's opinion, moreover was dated October 29, 2009 (AR 377), well before  
17 the August 25, 2011 opinion of Dr. Bierdrager, and thus he did not have the benefit of  
18 seeing the latter report. Dr. Gregg's opinion also is a check box opinion relying on  
19 another State reviewing physician's evaluation of the medical records (AR 376) which  
20 the Court discredits below. More to the point, the ALJ failed to mention Dr. Bierdrager's  
21 report or give any reasons or cite to any evidence for rejecting it. The fact that the ALJ  
22 could have rejected the report for lack of objective evidence and/or on the basis of  
23 Dr. Gregg's opinion is not a legally proper basis for affirming the ALJ decision. Connett,  
24 340 F.3d at 874. The ALJ was obliged to present specific legitimate reasons for  
25 rejecting conflicting clinical evidence. The ALJ plainly did not do so here.

26 2. Dr. Uber-Zak.

27 Similarly, the ALJ failed to discuss or even mention the report, findings and  
28 opinions of Dr. Lori Uber-Zak, D.O., M.P.I., a neurologist. She completed a statement

1 dated October 8, 2007 that Plaintiff had a medically verifiable condition that “would limit  
2 or prevent him/her from performing certain tasks.” (AR 259.) Dr. Uber-Zak described  
3 Plaintiff’s condition as “acute” and noted she had “limitations that affect his/her ability to  
4 work or participate in education or training.” (AR 259.) Dr. Uber-Zak also administered  
5 an EEG test on September 11, 2007 and concluded that Plaintiff probably suffered from  
6 non-epileptic spells (pseudo seizures) which are “mostly commonly a form of conversion  
7 or dissociative disorder in patients with a history of emotionally traumatic experiences.”  
8 (AR 290.)

9 The Commissioner asserts that Dr. Uber-Zak’s report lacks objective basis but  
10 again this Court cannot consider any argument not appearing in the ALJ decision.  
11 Connett, 340 F.3d at 874. The Commissioner also notes the physical RFC assessments  
12 of State reviewing physicians who indicated Plaintiff had no exertional impairments but  
13 this evidence (5F, 9F) does not appear in the ALJ decision and does not relieve the ALJ  
14 of providing specific, legitimate reasons for discounting Dr. Uber-Zak’s opinion. Thomas,  
15 278 F.3d at 957. The Commissioner also contends that Dr. Uber-Zak’s opinion is not  
16 relevant because it precedes the July 24, 2009 SSI application date. Yet the ALJ  
17 repeatedly cites evidence before that date in his decision, presumably because of how it  
18 might bear on Plaintiff’s condition after July 24, 2009. The Commissioner cannot have it  
19 both ways. The ALJ failed to present specific, legitimate reasons for rejecting Dr. Uber-  
20 Zak’s opinion.

### 21 3. The Record Is Not Fully Developed

22 Apart from the error in not addressing the reports and opinions of Dr. Bierdrager  
23 and Dr. Uber-Zak, the record here is not fully developed. In Social Security cases, the  
24 ALJ has a special, independent duty to develop the record fully and fairly and to assure  
25 that the Claimant’s interests are considered. Tonapetyan v. Halter, 242 F.3d 1144, 1150  
26 (9th Cir. 2001); Smolen, 80 F.3d at 1288; Brown v. Heckler, 713 F.2d at 441, 443 (9th  
27 Cir. 1983). The ALJ has a basic duty to inform himself about facts relevant to his  
28 decision. Heckler v. Campbell, 461 U.S. 458, 471 n.1 (1983) (Brennan, J., concurring).

1 The ALJ's duty to develop the record exists even when the claimant is represented by  
2 counsel. Tonapetyan, 242 F.3d at 1150. Ambiguous evidence or the ALJ's own finding  
3 that the record is inadequate to allow for proper evaluation of the evidence triggers the  
4 ALJ's duty to conduct an appropriate inquiry. Smolen, 80 F.3d at 1288; Tonapetyan,  
5 242 F.3d at 1150.

6 In particular, the Court has concerns about the ALJ's conclusory determination  
7 that Plaintiff has no functional limitations due to her mental impairments of confusion and  
8 memory loss. (AR 11.) Dr. Bierdrager's opinion obviously is in conflict with this finding.  
9 The Court directs the ALJ on remand to obtain any relevant records from Dr. Bierdrager  
10 and San Bernardino County Mental Health Department (which should resolve the  
11 Commissioner's concerns about the nature and extent of Dr. Bierdrager's treating  
12 relationship with Plaintiff). Additionally, Dr. Uber-Zak observed that non-epileptic spells  
13 "are mostly commonly a form of conversion or dissociative disorder in patients with a  
14 history of emotionally traumatic experiences." (AR 290.) The Commissioner does not  
15 mention this opinion. The Court directs the ALJ on remand to contact Dr. Uber-Zak and  
16 obtain all relevant documents from her and from Loma Linda University Medical Center.

17 The Commissioner, ALJ and the State reviewing physician (Dr. G. Taylor Holmes  
18 at AR 376) all acknowledge Plaintiff's memory issues but say her memory problems are  
19 secondary to her seizure disorder and she has never been referred to a mental health  
20 specialist nor is there any history of mental health issues. (AR 376.) Dr. Holmes,  
21 however, was relying on Plaintiff's statement that her memory problems were secondary  
22 to her seizures and Dr. Bierdrager appears to be a Ph.D. psychologist. Moreover, there  
23 does not appear to have been any psychological testing to determine the extent of  
24 Plaintiff's memory and confusion issues, whether or not they are secondary to her  
25 seizure disorder. The lack of testing undermines the ALJ's conclusory determination  
26 that Plaintiff has no limitations due to memory and confusion. On remand, the ALJ  
27 should develop objective medical evidence to determine the extent of Plaintiff's  
28 limitations due to memory loss and confusion, and if they result in more than minimal

1 limitations in the ability to perform basic work activities, consider those limitations in  
2 combination with her other impairments in determining Plaintiff's RFC.

3 The Court also is concerned about medication side effects and their possible  
4 relationship to Plaintiff's memory and confusion issues. Although the Commissioner  
5 argues that none of Plaintiff's doctors found Plaintiff had medication side effects, the ALJ  
6 specifically found that Plaintiff's primary care physician thought Plaintiff's seizures or  
7 blackouts could be due to her anti-hypertensive medication. (AR 13.) The  
8 Commissioner contends that Plaintiff's seizures are well controlled with medications but  
9 the ALJ found that Claimant still had numbness, tingling and auras. (AR 13.) Claimant  
10 also suffered another seizure or blackout in 2010 (AR 388, 13) that neither the ALJ nor  
11 the Commissioner discusses. The ALJ and the Commissioner both seem content to  
12 conclude Plaintiff's seizures are non-epileptic (which the evidence supports) but  
13 nowhere is there any explanation for Plaintiff's seizures or blackouts and the only RFC  
14 assessments are from State reviewing physicians who never examined Plaintiff or  
15 treating physicians the ALJ never mentioned in his decision. The Court instructs the ALJ  
16 on remand to obtain both a mental RFC and a physical RFC from physicians who  
17 actually examine Plaintiff.

18 Finally, the ALJ decision makes a conclusory determination that Plaintiff is not  
19 credible to the extent her alleged symptoms are inconsistent with the ALJ's RFC (AR 13)  
20 but cites no reasons or evidence other than the medical evidence which by itself legally  
21 cannot suffice even if fully credited. See Burch v. Barnhart, 400 F.3d 676, 680-81 (9th  
22 Cir. 2005) (ALJ may consider a lack of medical evidence corroborating Plaintiff's  
23 symptoms in evaluating credibility so long as it is not the only reason for discounting  
24 credibility). The Commissioner tries to squeeze other justifications out of the ALJ  
25 decision to support the ALJ's adverse credibility determination but either the Court  
26 cannot consider them, Connett, 340 F.3d at 874, or they are now in doubt in view of the  
27 Court's ruling above. The ALJ on remand must provide clear and convincing reasons for  
28 any adverse credibility determination. Thomas, 278 F.3d at 958.

**ORDER**

IT IS HEREBY ORDERED that Judgment be entered reversing the decision of the Commissioner of Social Security and remanding this case for further proceedings in accordance with this Memorandum Opinion and Order and with law.

DATED: March 6, 2014

/s/ John E. McDermott  
JOHN E. MCDERMOTT  
UNITED STATES MAGISTRATE JUDGE